LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Nineteenth Annual Report
April 1, 2009 to March 31, 2010

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NOVA SCOTIA

NINETEENTH ANNUAL REPORT

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The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

The Commissioners for 2009-2010:

Anthony R. Chapman , President
Diana Ginn (Resigned August 2009)
Darlene Jamieson
John L. McMullan
Kevin Coady
Ronald A. MacDonald
Robert J. Currie (Appointed January 2010)

The Commission staff in 2009-2010:

John E.S. Briggs
Executive Director and General Counsel

William H. Laurence
Legal Research Counsel (until May 2009)

Angus Gibbon
Legal Research Counsel (since August 2009)

Andrea Davidson
Administrative Assistant

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The Commission gratefully acknowledges this financial support.

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A. OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia under the *Law Reform Commission Act*.[1] The Commission consists of between five and seven Commissioners (there are currently six), an Executive Director and legal research and administrative staff. The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia. It is not, however, a government department, but an independent advisor to government. The Commissioners, whose appointment process is set out in the *Act*, currently serve part-time and come from different sectors of the community. One Commissioner is a judge appointed by the Governor in Council (provincial Cabinet) after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member; two are community representatives appointed by Cabinet; two are appointed by the Council of the Nova Scotia Barristers' Society; and one person represents the full-time members of the Faculty of Law, Dalhousie University. One of the Commissioners must not be a graduate in law.

Mandate

The Commission's job is to review Nova Scotia law and to make recommendations for its improvement, modernization and reform. This may involve formulating new ideas and approaches to law, or proposing ways in which existing laws and the legal system can be made clearer or simpler to better serve the needs of the province. The Commission may choose a topic for law reform based upon suggestions received from government, lawyers, judges, or the community. A project may also follow a government request, generally known as a reference. Since 1991, the Commission has received eleven references from the Government. The references related respectively to the administrative justice system, the probate system, mental health provisions of the *Hospitals Act*, adoption information law,[2] grandparent-grandchild access, liability for contaminated sites arising under the *Environment Act*, the garnisheeing of wages, the rule against perpetuities, the *Human Rights Act* and "Seniors Only" housing, the *Powers of Attorney Act*, and the Builders' Lien Act.

The Commission does not make law in Nova Scotia; that task is performed in part by the elected Members of the House of Assembly. The Commission's reports and recommendations are, however, formally presented to the Attorney General and may result in changes to the law. Law is also made through the decisions of judges and appointed administrative decision-makers in cases that come before them.

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1 S.N.S. 1990, c.17, reproduced at **Appendix A**.

2 Reports on the administrative justice, probate, *Hospitals Act*, grandparent-grandchild access and contaminated sites projects have been completed. Following completion of background research, work on adoption information law was suspended after news in 2000 of the loss of government funding. The project was subsequently referred to a committee formed by the Minister of Community Services.

A distinguishing characteristic of the Commission is its independence from government. Although in the past the Commission received a significant portion of funding from government, on average about one third of its money came from other sources. Government has a role in Commissioner selection, but does not choose all of the Commissioners, and no Commissioner is chosen to represent the Government. The Commission does undertake government requests for law reform projects, as far as is feasible, but apart from that requirement, is free to select the work it undertakes. So long as done in compliance with its object and powers under the *Act*, the Commission enjoys a free hand in terms of its activities: it may conduct meetings, hire people, perform research, publish reports, enter into cooperative arrangements with other entities, and decide how its funds are to be spent.

Law Reform Process

The Commission usually prepares two publications during the course of a project. The first publication, the *Discussion Paper*, sets out the Commission's preliminary suggestions for reform. The purpose of the Discussion Paper is to encourage people to consider and comment on the Commission's preliminary suggestions, as well as any issues, principles, and assumptions identified as having influenced the Commission's proposals for reform.

As part of the preparations for a Discussion Paper, the Commission generally forms an *Advisory Group*. The Advisory Group usually consists of Commission legal staff, and a number of community members, including government representatives, the judiciary, lawyers and other professionals, as well as participants from groups with interest or expertise in the topic being studied. The Group meets to identify and discuss relevant issues, as well as to propose to the Commission what should be included in a Discussion Paper.

The second publication is a *Final Report,* which is submitted to the Attorney General, and which is widely distributed. It contains the final recommendations of the Commission and, in some cases, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion Paper. A Final Report is intended to provide a basis for the Government to consider and adopt the recommended reforms. The process adopted by the Commission, of seeking expert advice, consulting widely, synthesizing feedback, deliberating and report writing, is a time-consuming one. It is a process, however, which is designed to give greater weight and credibility to the final recommendations which result. The Commission does not engage in active advocacy regarding implementation of its recommendations beyond providing the recommendations to the Government and members of the public. The Commission has produced 40 project reports and 18 annual reports, which are listed at **Appendix C.** [All reports can be downloaded without cost from the Commission's website.]

Effects of Law Reform Work

Recommendations in Commission Final Reports have been brought into effect in a number of ways. One way, which perhaps comes most readily to mind, is through incorporation in new or amended legislation. In September 2009 the government introduced Bill 14, *Amendments to the Judicature Act,* the purpose of which was to empower the Supreme Court of Nova Scotia and the Nova Scotia Court of Appeal to prevent a vexatious litigant from starting new proceedings or continuing existing proceedings. This proposed legislation, which came into effect in March 2010, was based on recommendations in the Commission's Final Report: *Vexatious Litigants* (April 2006). In 2007, Alberta legislators changed Alberta law based upon the Nova Scotia Law Reform Commission's report.

In May 2008 the government introduced and passed the *Personal Directives Act.* This legislation was based on the issues identified, and the proposals recommended, by the Commission in its 1995 Final Report: *Reform of the Laws Dealing with Adult Guardianship and Personal Health Care Decisions.*

In recent years, acting on proposals in respective Commission Final Reports, the Nova Scotia government has also enacted changes to provincial law dealing with testamentary wills (*Wills Act*, S.N.S 2006, c.49), mental health treatment and facilities (*Involuntary Psychiatric Treatment Act*, S.N.S 2005, c.42) and Builders' liens (*Builders' Lien Act,* S.N.S. 2004, c 14).

The influence of the Commission's work, however, goes beyond legislation. Certain Final Report recommendations have been implemented through government policies or protocols. Commission reports have also served an important educational function and have been used as course materials in high schools and at post-secondary institutions. In this context it is to be noted that the Law Reform Commission was the recipient of the Canadian Bar Association's 2007 *Law Day Award* for the Commission's efforts in promoting public legal education. Further, Government, public interest groups, and other organizations have relied on Commission reports in order to develop awareness of issues and to focus discussions among interested people. For instance, *Law Reform Agencies*, a 2004 publication of the International Cooperation Group of the Federal Department of Justice, reflected the influence of Commission reports.

The contents of Commission reports have been referred to by a number of courts, including the Supreme Court of Canada, as part of their published case decisions. Judges have mentioned Commission reports in a number of contexts, including interim payment of damages, matrimonial property, administrative law, the jury system, powers of attorney and the legal status of the child born outside of marriage.

Nova Scotia House of Assembly members from the Liberal, New Democratic, and Progressive Conservative parties have referred with approval to Commission reports or to Commission work generally, during the course of legislative debates.

Most of the Commission's time is spent choosing, discussing, and researching law reform subjects, followed by report writing and communicating the conclusions reached. Another significant role of Commission staff is responding to inquiries about the law or about aspects of the Commission's

work. The Commission does not provide legal advice, nor does it intervene in individual cases. Nonetheless, Commission staff continue to respond to inquiries by telephone, by fax, by letter, by e-mail, or in person. In replying to inquiries, Commission staff have provided legal information, copies of Commission reports as well as other documents, and contact details for government departments and other relevant institutions.

Funding

The Commission is currently funded jointly by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to the law, legal education, and the administration of justice, obtains its funds from the interest on lawyers' general trust accounts. The Law Foundation's objectives specifically include law reform.[3]

[3] *Legal Profession Act*, S.N.S. 2004, c. 28, s. 73.

B. THE YEAR IN REVIEW 2009-2010

Work Program and Publications:

Completed Projects

- **Contaminated Sites in Nova Scotia**

The Commission began this major project as a result of a Reference from the Attorney General which it received in February 2008 under section 8 (2)(b) of the *Law Reform Commission Act*. The principal focus of the project was on issues relating to the legal liability for contaminated sites arising under the provisions of the *Environment Act*. In May 2009 the Commission issued a Discussion Paper which was widely disseminated and engendered significant comment. During the summer and fall of 2009 the Commission received and considered submissions with respect to the Discussion Paper. A Final Report with recommendations to government was submitted to the Attorney General in December 2009 and given widespread public distribution in January 2010.

The salient features of the Commission's report, as was noted at the time of its release, are as follows:

The report recommends several changes to provincial law, to encourage cleanup of contaminated properties.

Many Nova Scotians live and work near lands which are vacant or under-used, because of environmental contamination. These properties - often referred to as brownfields - are subject to far-reaching environmental legislation which can make purchasing or investing in them a daunting prospect. Existing environmental legislation can impose very expensive liability for cleanup on a broad range of parties connected with the property in some way, not just the polluter. To this extent, current legislation is counter-productive.

For example, the broad net of potential liability applies even when a seller and purchaser have agreed between themselves who should bear the expense of any required cleanup - the province is not bound to respect such an agreement and can order either party to undertake the cleanup at its own expense. Likewise, a redeveloper might wish to purchase and clean up the property to current environmental standards, but would be discouraged from doing so because there is no protection against a future environmental cleanup order if the standards change. As well, owners and others may be held responsible by the province for cleanup, even though another party is totally at fault for the spill. The owner is not always able to sue the person actually responsible in order to recover the cost of cleanup.

The Commission's report examines the current state of the law under the Province's *Environment Act*. It takes aim at the current system of assigning potential liability to almost anyone connected with the property, without adequate legal safeguards to ensure that owners and redevelopers are not discouraged from undertaking renewal projects. The Commission recommends the adoption of comprehensive contaminated sites regulations, favouring a policy of fairness, certainty and transparency. Among other things, the report specifically recommends that:

- Upon completion of a site cleanup, the person responsible should receive a certificate, which would protect against any future regulatory action. A future cleanup order would be permitted in only limited circumstances, such as misrepresentation in obtaining the original certificate.

- The government should be in a position to give a binding assurance that it will respect a private agreement to transfer liability for any future site cleanup from one party to another. Regulations should define the appropriate circumstances in which such assurance should be given.

- The broad list of persons potentially responsible for cleanup of a contaminated site under the Environment Act should be narrowed, to exclude persons who in all fairness ought not to held liable for contamination caused by others.

- Where there is more than one person potentially responsible for cleanup of a contaminated site, there should be a binding adjudicative process to allocate the clean up expense among the appropriate parties.

- The provincial government should set aside funds for the cleanup of contaminated property, following a comprehensive study of the nature and scope of the problem of contaminated sites in Nova Scotia. Not all polluters will be in a position to clean up contamination, and in those cases dedicated public funds should be available - particularly where the property is in a potentially valuable location or there is an ongoing risk to health.

- Government bodies which own contaminated sites should be subject to regulatory liability for cleanup like any other party. A limited exception would apply where a government body acquires property involuntarily or by a tax sale, and the contamination is not likely to cause serious harm or environmental damage.

- An environmental registry of information should include all records regarding contaminated sites in the province, freely accessible to the public in a user-friendly, searchable format.

Reforms like these have been adopted in other provinces. As was observed by the Commission at the time of the Report's release: 'There is no magic solution to brownfields, but it's now generally understood that casting a wide net of perpetual potential liability actually discourages remediation in some cases. As a province we are not alone in realizing this. The objective of the recommendations is to improve the legal climate for putting brownfields back into use in this province.'

Projects in Progress

▸ The Rule Against Perpetuities

This project was also undertaken as a result of a Reference received from the Attorney General in September 2008 under Section 8 (2)(b) of the *Law Reform Commission Act*. The Commission has been asked to provide its advice and recommendations on whether the Rule Against Perpetuities should be retained, abolished or reformed. The Reference followed a request from the Nova Scotia Barristers' Society to the government that the province develop legislation to abolish the rule. The Rule Against Perpetuities came into being in England in the late 17th century in order to prevent wealthy aristocratic landowners from tying up their properties in perpetuity. The circumstances giving rise to the rule, while never especially applicable to Nova Scotia, have long since changed if not disappeared. Additionally, modern taxation laws very much militate against the kind of problems which the rule was originally designed to address. The rule is an esoteric and highly complex area of law. The preparation of a Discussion Paper, which had been anticipated during the reporting period, has taken longer than expected. A Discussion Paper was, however, being finalized following the reporting period and is expected to be published and distributed by July 2010.

▸ Civil Procedure Rule 79.08 - Attachment of Debt or Other Obligation

In November 2008 the Commission received a formal Reference from the Attorney General seeking the Commission's advice with respect to Rule 79.08 - Attachment of Debt or Other Obligation. As noted in last year's Annual Report this issue arose during the course of the passage of the new Civil Procedure Rules through the House of Assembly. At that time, concern was expressed regarding the impact of the then proposed new Civil Procedure Rule 79.08 when garnishing wages. The central concern giving rise to this Reference has since been largely dealt with as a result of changes to Rule 79.08. The residual issue, however, of whether or not garnishee of wages should be dealt with by legislation rather than by judicial rule making, remains. Following discussion with the Attorney General, the Commission concluded that this question can be best dealt with in the context of the Commission's project on the Enforcement of Civil Judgements.

▸ Enforcement of Civil Judgements

This project had its genesis in the Commission's work on the Small Claims Court. Users of the Small Claims Court, while generally satisfied with the workings of that court have consistently expressed dissatisfaction with the process for enforcing, or collecting on, judgements. The Department of Justice has asked the Commission to conduct a project which will examine the issue of enforcement in the civil justice system at large. This is an important and ambitious project involving both access to, and the effectiveness of, the justice system. During the reporting period an Advisory Group has been established and held meetings. A Discussion Paper is currently in development which, it is anticipated, will be released during the upcoming year.

New References

In March 2010 the Commission received the following three new References from the Attorney General:

1. *Human Rights Act* - "Seniors Only" Housing. The legislation in several Canadian jurisdictions is designed to facilitate the development of seniors only housing. One issue raised by this Reference is whether or not an amendment to the Nova Scotia *Human Rights Act* is necessary or advisable in order to facilitate the development of such housing. This issue becomes somewhat more complex in light of the potential for a challenge to *Human Rights Act* amendments under section 15 (1) of the *Charter of Rights and Freedoms.*

2. *Powers of Attorney Act.* The Commission has been asked to provide the Minister of Justice with its general recommendations on the improvement and modernization of the *Powers of Attorney Act.* This is potentially a very ambitious project. It is, however, one where the Commission is in a position to build upon some of its earlier work, as detailed in its Final Report: *Enduring Powers of Attorney in Nova Scotia.* (September 1999).

3. *Builders' Lien Act.* The Commission has been asked to examine several discrete questions regarding hold backs under the *Builders' Lien Act* of 2004. That Act followed the recommendations in the Law Reform Commissions's 2003 Report: *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act.*

During the forthcoming fiscal year the Commission will be establishing Advisory Groups for each of these projects as well as preparing and issuing Discussion Papers and Reports.

External Activities and Relations

The Commission and its staff consider it particularly important to maintain close liaison with the practicing Bar, the judiciary, the legal academic community, the Government, our Saint Mary's University partners, and others.

Commission staff have attended and participated in a number of external meetings and conferences during the past year in addition to many less formal activities. In particular the Commission's Executive Director participated in the Annual Meetings of:

- the Nova Scotia Barristers' Society
- the Federation of Law Reform Agencies of Canada
- the Uniform Law Conference of Canada

In addition the Executive Director attended various meetings and events hosted by such organizations as the Legal Information Society of Nova Scotia, the Canadian Bar Association - Nova Scotia Branch, and the Nova Scotia Barristers' Society.

During the past year, the Executive Director met with, amongst others, the Attorney General and Deputy Attorney General of Nova Scotia, the President and Vice-President of Saint Mary's University, the President and the Executive Director of the Nova Scotia Barristers' Society, the President of the Canadian Bar Association-Nova Scotia Branch, the Director of the British Columbia Law Institute, the Director of the Alberta Law Reform Institute, the Executive Director of the Ontario Law Commission, and the President of the Federation of Law Reform Agencies of Canada.

During the reporting period Commission work was mentioned in various regional news media as well as The Lawyers Weekly, the Canadian Bar Association and Nova Scotia Barristers' Society publications, other law reform agencies' reports, and Hansard.

Internal Administration and Organization

The Commission currently has six Commissioners. In August 2009, Professor Diana Ginn resigned as a Commissioner, having served since 2002. Professor Robert J. Currie was appointed as a Commissioner in 2010.

John E.S. Briggs continued to serve as Executive Director and General Counsel and William Laurence as Legal Research Counsel until his resignation in May 2009 after eleven years of outstanding service, in order to assume a position in the Nova Scotia Department of Justice. The Commission was very pleased to have Angus Gibbon join in August of 2009 as Legal Research Counsel.

The Commission continues to benefit from the services of Professor William H. Charles, Q.C. as Special Counsel to the Commission. Professor Charles has provided valuable assistance with respect to all of the Commission projects during the past year, and in particular, on the Contaminated Sites Project.

Funding & Finances

From the establishment of the Commission in 1991 until 2001, the Commission received on average two thirds of its funding from the Government of Nova Scotia, and the remaining one third from the Law Foundation of Nova Scotia. At the time of its establishment, it had been purposely decided in discussions between the Government and the Law Foundation that the Commission would be funded equally by both. It was believed that with this funding arrangement the Commission would be, and would be seen to be, more independent than if it received all of its funding from Government. The original (1991) Commission budget was $300,000 (now $422,926.83, based on the Bank of Canada inflation calculator) of which it was expected that the Law Foundation and Government would each provide half of the required core funding.

During the fiscal years 2001 until March 31, 2004 all of the Commission funding was provided by the Law Foundation of Nova Scotia. Since that time, until the present, the Commission has been funded by both the Law Foundation and the Government of Nova Scotia.

During the reporting period, the Commission received core funding in the amount of $167,728.00 from the Law Foundation, and $184,824.00 from the Department of Justice.

The Commission's financial statement for the year ending 31 March 2010 is attached to this report as **Appendix B**.

The Commission continued to operate during the current fiscal year within its available resources.

The 2009-10 fiscal year began with an accumulated surplus of $40,318 which included $36,739 of accrued project funds. By year's end as a result of a focus on cost-reduction, as well as a three month staff vacancy, the Commission had a net operating surplus of $14,446 thereby producing a total accumulated surplus of $54,764. This surplus had been projected when developing the Commission's 2010-11 budget and will be utilized to off-set current (2010-11) reductions in funding.

C. LAW REFORM: - MAKING THINGS BETTER

This report marks the completion of 19 years of continuous operation since Nova Scotia established an independent Law Reform Commission in 1990. The Commission's mandate is to make recommendations to government for the improvement, modernization and reform of Nova Scotia law. In carrying out this responsibility the Commission is specifically tasked to consider recommendations that will clarify and simplify the law; remove outdated provisions; improve the administration of justice; or reflect new approaches to, and new concepts of law, that are responsive to the changing needs of society and its members.

During the past nineteen years the Commission has issued some 40 Discussion Papers and project Reports. The subject matter of Commission projects covers a varied array of legal issues as can be readily seen from a review of its list of publications which is attached as Appendix C to this report.

All of the Law Reform Commission's project reports, as well as those projects currently underway, speak to one or more terms of its mandate. Although Commission projects may cover a great diversity of issues, the overarching objective of all the Law Reform Commission's work is simply to help 'make things better'.

The law intimately affects all aspects of people's lives. Reform of the law with resulting improvements to the Nova Scotia legal system is not a luxury nor an unnecessary frill - it is an imperative of civil society. Making the legal system better - that is, more accessible, more effective, and more responsive - makes Nova Scotia a better place to live and work. Improvements to the legal infrastructure necessarily make Nova Scotia a more attractive and economically competitive place to do business.

The Commission's Contaminated Sites project represents its first work in the environmental law area. While there are vigorous debates about both the causes and cures for environmental issues there can be no doubt that our air, water and food - indeed our very survival - is inextricably tied to the state of the environment. The human devastation caused by such frequent occurrences as tropical storms, floods, droughts and oil spills - whether generated by man or nature - has dramatically confirmed this critical relationship between the environment and our daily lives.

Although environmental law issues remain many and challenging in Nova Scotia, the Commission's most recently completed report on *Contaminated Sites in Nova Scotia* reflects a principled and fair approach to questions of legal liability for contaminated sites. The ultimate aim is to facilitate their clean-up and return to productive use whilst at the same time protecting the environment and the public's health.

Over the past 19 years the Law Reform Commission has benefitted enormously from the voluntary expertise of many Nova Scotians who have freely served on its various Advisory Groups. The remarkable contribution of so many lawyers, judges and members of the public to the Commission's work is a testament to their sense of public service and their strong commitment to making Nova Scotia and its justice system better.

In summary, the 2009-2010 fiscal year has been very positive. The Commission completed a major project, with recommendations to government, on contaminated sites. It has also advanced its work on several other projects. In addition, the Commission received three new references from the Attorney General. The Commission begins its 20th year with a solid legacy of work and continuing optimism for the future.

COMMISSIONERS AND STAFF

Commissioners

Anthony L. Chapman Q.C., President
Commissioner (2004 -)
Mr. Chapman was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2004. He has been a member of the Nova Scotia Bar since 1980. A partner in the Halifax office of the law firm Cox & Palmer, Mr. Chapman specializes in corporate/commercial law, real property law, secured transactions, and environmental law. Mr. Chapman was appointed President in 2007.

Kevin Coady
Commissioner (2007 -)
Mr. Coady was appointed to the Commission by Order in Council in December 2007. Mr. Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with Coady Filliter and taught Criminal Law at Dalhousie University.

Diana Ginn
Commissioner (2002 - 2009)
Ms. Ginn was appointed to the Commission by Order in Council in June 2002. She is an associate professor at the Faculty of Law, Dalhousie University, teaching in the areas of property law, administrative law, health law and women in the law. Ms. Ginn specializes in research and writing in these subject areas, and has published numerous articles.

Robert J. Currie
Commissioner (2010 -)
Mr. Currie was appointed to the Commission by Order in Council in January 2010. He is an Assistant Professor at the Schulich School of Law, Dalhousie University which he joined in 2002. Prior to his academic appointment Mr. Currie had a civil litigation practice. He has been a member of the Nova Scotia Bar since 2000. Mr. Currie is a specialist in the area of international and transnational criminal law. He has authored and co-authored numerous articles on this subject as well as his own book *International and Transnational Criminal Law.*

Darlene Jamieson Q.C.
Commissioner (2002 -)
Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

John L. McMullan
Commissioner (2006 -)
Dr. McMullan was appointed to the Commission by Order in Council in February 2006. He is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

Ronald A. MacDonald
Commissioner (2009 -)

Mr. MacDonald was appointed to the Commission by Order in Council in February 2009. He is retired from the Nova Scotia Teacher's Union where his duties included working with three levels of government, public affairs and various committee work. He has also been a newspaper reporter as well as a commentator for CBC covering local, regional and national affairs. Mr. MacDonald is a graduate of Mount Allison (B.A. and BED.) and Dalhousie (MA.) Universities. He remains active in a number of community projects including the North Sydney Historical Society.

Staff

John E.S. Briggs
Executive Director & General Counsel
Mr. Briggs, a graduate of Carleton, Queens and Oxford universities, was called to the Bar in 1974. He has been Executive Director of the Commission since 2001, and also acts as Outside Counsel to the Federal Minister of Justice on alleged miscarriage of justice cases. Mr. Briggs is a practicing member of the Bar in Nova Scotia and Ontario, and was President of the Federation of Law Reform Agencies of Canada from 2003 to 2008.

William H. Laurence (until May 2009)
Legal Research Counsel
Mr. Laurence joined the Commission in September, 1998. He has a B.A. (Hon.) from Carleton University, an LL.B. from McGill University as well as an LL.M., M.L.I.S and J.S.D. from Dalhousie University. He worked as a legal researcher and practiced law before joining the Commission.

Angus Gibbon (since August 2009)
Legal Research Counsel
Mr. Gibbon earned his B.A. with Honours from Acadia University in 1996, and a law degree from the University of Toronto in 1999. In 2005 he completed his Ph.D. in political science from the University of Toronto with an emphasis on constitutional rights law in Canada. Mr. Gibbon practiced law before returning to Halifax to join the Commission in 2009. He also teaches Comparative Constitutional Law at Dalhousie University.

Andrea Davidson
Administrative Assistant
Ms. Davidson joined the Commission in May 2008. She has a strong administrative background with an emphasis on the travel industry.

William H. Charles, Q.C.
Special Counsel
Professor Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

Appendix A

The Law Reform Commission Act

Appendix A.

The Law Reform Commission Act

CHAPTER 17 OF THE ACTS OF 1990

An Act to Establish an Independent Law Reform Commission

Short title

1 This Act may be cited as the *Law Reform Commission Act.* 1990, c.17, s.1.

Interpretation

2 In this Act, "Commission" means the Law Reform Commission of Nova Scotia. 1990, c.17, s.2.

Law Reform Commission of Nova Scotia

3 There is hereby established a body corporate to be known as the Law Reform Commission of Nova Scotia. 1990, c.17, s.3.

Object of Commission

4 The object of the Commission is to review the law of the Province and any matter relating to law in the Province and to make recommendations for improvement, modernization and reform including, without limiting the generality of the foregoing, recommendations for

(a) development of new approaches to, and new concepts of, law that serve the changing needs of society and of individual members of society;

(b) clarification and simplification of the law;

(c) removal of provisions of the law that are outdated;

(d) improvement of the administration of justice;

(e) review of judicial and quasi-judicial procedures. 1990, c.17, s.4.

Composition of Commission

5 (l) The Commission shall be composed of not fewer than five nor more than seven commissioners who may be appointed, either on a full-time basis or a part-time basis, as follows:

(a) two members of the Nova Scotia Barristers' Society appointed by the Council of the Society;

(b) a judge of a court of the Province, appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge

is a member;

(c) a full-time member of the Faculty of Law of Dalhousie University appointed by the Governor in Council after consultation with the Dean of the Faculty;

(d) a person who is not a graduate in law appointed by the Governor in Council;

(e) where the Governor in Council determines that the Commission is to be composed of more than five commissioners, one or two persons appointed by the Governor in Council.

Term of office of commissioner

(2) Each commissioner holds office for a term of three years, except that one of the first commissioners appointed by the Council of the Nova Scotia Barristers' Society and one of the first commissioners appointed by the Governor in Council shall be appointed for a term of two years.

Ceasing to be a commissioner

(3) A person ceases to be a commissioner where

(a) that person fails to attend three consecutive regular meetings of the Commission, except where the Commission by resolution excuses the absences; or

(b) the composition of the Commission ceases to comply with this Act as a result of the person ceasing to be a person described in clause (a), (b), (c) or (d) of subsection (1).

Casual vacancies

(4) Where a person ceases to be a commissioner for any reason other than the expiration of that person's term of office, the Governor in Council or the Council of the Nova Scotia Barristers' Society, as the case may be, shall appoint a person for the unexpired portion of the term.

Re-appointment of commissioner

(5) A commissioner whose term of office has expired may be re-appointed.

Expiry of term of office

(6) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Vacancy

(7) A vacancy in the membership of the Commission does not impair the ability of the remaining members to act. 1990, c.17, s.5.

President of Commission

6 The commissioners shall appoint one of the members of the Commission to be the President of the Commission. 1990, c.17, s.6.

Remuneration and expenses

7 The President and other members of the Commission may be paid such remuneration and shall be paid

such travelling and living expenses as may be determined by the Governor in Council. 1990, c.17, s.7.

Powers of Commission

8 (1) The Commission may

(a) receive and consider any proposals for the reform of the law that may be made to it by any person;

(b) initiate, carry out and direct such studies and research as are necessary to properly carry out its object;

(c) publish papers, studies or other documents prepared by or for the Commission;

(d) co-operate or enter into agreements with any organization that undertakes projects relating to the object of the Commission within or outside the Province;

(e) with the concurrence of the Attorney General and to the extent that the Commission is able to do so without, in its opinion, impairing its ability to carry out its object or duties, provide information, research material and study results and make recommendations to departments, boards and agencies of the Government of the Province concerned with the improvement, modernization or reform of laws;

(f) regulate its proceedings and provide generally for the conduct and management of its affairs;

(g) do such things and take such measures as the Commission considers advisable for the achievement of its object, including the making of by-laws.

Duties and further powers of Commission

(2) The Commission

(a) may make use of technical and other information, advice and assistance from departments, boards and agencies of the Government of the Province;

(b) shall undertake, at the request of the Attorney General, in a manner as determined by the Commission, the examination of particular laws or branches of the law and make recommendations for their improvement, modernization and reform. 1990, c.17, s.8.

Meetings of Commission

9 The Commission shall meet at least four times in each year. 1990, c.17, s.9.

Personnel

10 (1) An Executive Director and such persons as are required for the administration of this Act and the regulations shall be appointed by the Commission, in accordance with the *Civil Service Act.*

Function of Executive Director

(2) The Executive Director has the management, direction, control and administration of the day-

to-day operations of the Commission.

Advisers

(3) Notwithstanding subsection (1), the Commission may engage, upon such terms and conditions as the Commission deems fit, the services of such professional persons, technical persons and experts to advise the Commission as the Commission deems necessary for the carrying out of its object. 1990, c.17, s.10.

Appropriation of money

11 (1) Money appropriated by the Legislature for the purpose of this Act shall be paid out by the Attorney General.

Law Reform Commission Fund

(2) The Commission shall maintain an account to be under the control and management of the Commission, to be known as the Law Reform Commission Fund, into which the Attorney General may pay from time to time any sum of money appropriated and into which may be paid any sum of money contributed as a grant or gift by any person, organization or body.

Use of money in Fund

(3) Except where a stipulation or condition is expressed in relation to a sum of money paid into the Law Reform Commission Fund, the money in the Fund may be used by the Commission for the purpose of this Act. 1990, c.17, s.11.

Annual report to Attorney General

12 (1) The Commission shall report from time to time to the Attorney General and shall make an annual report to the Attorney General on the activities of the Commission.

Tabling of annual report

(2) The Attorney General shall table the annual report of the Commission in the Assembly, if the Assembly is then sitting and, if the Assembly is not sitting, within fifteen days of its next sitting.

Other report

(3) Where the Commission reviews, considers or inquires into a matter, the Commission shall make a report to the Attorney General with respect to that matter at the conclusion of its deliberations.

Publication of report

(4) The Commission may publish a report made pursuant to this Section. 1990, c.17, s.12.

Repeal

13 Chapter 251 of the Revised Statutes, 1989, the *Law Reform Act*, is repealed. 1990, c.17, s.13.

Proclamation

14 This Act comes into force on and not before such days as the Governor in Council orders and declares by proclamation. 1990, c.17, s.14.

Proclaimed	-	January 22, 1991
In force	-	February 1, 1991

Appendix B.

Financial Report for the 2009- 2010 Fiscal Year

LAW REFORM COMMISSION OF NOVA SCOTIA
Income Statement as at 3/31/10

REVENUE		
OPERATING INCOME		
Department of Justice		184,824.00
Nova Scotia Law Foundation Contribution		167,728.00
Interest Income		457.23
TOTAL CONTRIBUTIONS		353,009.23
TOTAL REVENUE		353,009.23
EXPENSE		
ADMINISTRATIVE EXPENSES		
Wages	228,584.14	
EI Expense	3,823.27	
CPP Expense	6,612.55	
Group Insurance Expense	7,718.83	
TOTAL PERSONNEL RELATED		246,738.79
Advertising		682.08
Commissioners Fees & Expenses		1,070.37
Electrical Expense		1,140.23
Meeting Costs		572.57
Library		3,593.77
Accounting Fees		255.00
Membership Dues		4,335.13
Computer Software/Supplies/Repairs		7,134.80
Internet		2,497.45
Staff Expenses		4,500.34
Rent	32,031.48	
Office Equipment Rental	3,046.04	
Insurance	1,047.00	
TOTAL PREMISES RELATED		36,124.52
Office Supplies	2,173.67	
Photocopy/Printing	7,079.84	
Postage & Courier	3,344.22	
Telephone Expense	3,343.17	
Travel/Conference/Workshop	6,248.90	
Staff Dev. & Registration Fee	0.00	
Office Equipment Maintenance	0.00	
TOTAL OFFICE RELATED		22,189.80
Bank Charges		373.22
HST Paid on Purchases		5,253.61
GST Paid on Purchases		91.31
Total Project Related		2,010.00
TOTAL ADMINISTRATION		338,562.99
TOTAL EXPENSE		338,562.99
NET INCOME		14,446.24

Law Reform Commission of Nova Scotia
Balance Sheet As at 03/31/2010

ASSETS			
CURRENT ASSETS			
Petty Cash			25.00
Bank Operating Account	7,563.75		
Cashable GICS	226,648.00		
T-Bill Account	0.00		
Total Cash			234,311.75
HST Receivable			5,351.67
TOTAL CURRENT ASSETS			239,588.42
FIXED ASSETS			
Computer Equipment		19,059.16	
Accum. Computer Equipment		- 19,069.16	
Net Office Equipment			(0.00)
Total Fixed Assets			(0.00)
TOTAL ASSETS			239,588.42
LIABILITIES			
CURRENT LIABILITIES			
Vacation Payable			0.00
UIC Payable		0.00	
CPP Payable		0.00	
Income Tax Payable		0.00	
Receiver General Payable			0.00
Accrued Income			184,824.00
TOTAL CURRENT LIABILITIES			184,824.00
EQUITY			
SURPLUS			
Surplus Beginning of Year			40,318.18
Surplus Current Year			14,446.24
ACCUMULATED SURPLUS			54,764.42
TOTAL EQUITY			54,764.42
LIABILITIES AND EQUITY			239,588.42

Explanatory Note:

The 2009-10 fiscal year began with an accumulated surplus of $40,318 which included $36,739 of accrued project funds. By year's end as a result of a focus on cost-reduction, as well as a three month staff vacancy the surplus had increased by $14,446 producing a total accumulated surplus of $54,764. This surplus was projected when developing the Commission's 2010-11 budget and will be utilized to off-set current reductions in funding.

Appendix C.

List of Publications (by project) 1991 - 2010

Law Reform Commission Publications

(As of March 31, 2010)

Administrative Justice System
(Agencies, Boards and Commissions - ABC Report)

- *Agencies Boards and Commissions: The Administrative Justice System* (Discussion Paper, January 1996
- *Reform of the Administrative Justice System in Nova Scotia* (Final Report, January 1997)

Adult Guardianship/Advance Health Care Directives

- *Adult Guardianship in Nova Scotia* (Discussion Paper, September 1993)
- *Living Wills in Nova Scotia* (Discussion Paper, November 1994)
- *Adult Guardianship and Personal Health Care Decisions* (Final Report, November 1995)

Contaminated Sites

- *Contaminated Sites in Nova Scotia* (Discussion Paper, April 2009)
- *Contaminated Sites in Nova Scotia* (Final Report, December 2009)

Custody and Access

- *Grandparent-Grandchild: Access* (Discussion Paper, January 2007)
- *Grandparent-Grandchild: Access* (Final Report, April 2007)

Domestic Violence

- *Violence in a Domestic Context* (Discussion Paper, March 1993)
- *From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia* (Final Report, February 1995)

Enduring Powers of Attorney

- *Enduring Powers of Attorney in Nova Scotia* (Discussion Paper, June 1998)
- *Enduring Powers of Attorney in Nova Scotia* (Final Report, September 1999)

Enforcement of Maintenance Obligations

- *Enforcement of Maintenance Obligations* (Discussion Paper, July 1992)
- *Enforcement of Maintenance Obligations* (Final Report, November 1992)

Future of the Law Reform Commission

- *A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia* (Report, December 2001)

Interim Payment of Damages

- *Interim Payment of Damages* (Discussion Paper, January 2000)
- *Interim Payment of Damages* (Final Report, February 2001)

Jury System

- *Reform of the Jury System in Nova Scotia* (Discussion Paper, May 1993)
- *Reform of the Jury System in Nova Scotia* (Final Report, June 1994)

Matrimonial Property

- *Matrimonial Property in Nova Scotia: Suggestions for a New Family Law Act* (Discussion Paper, April 1996)
- *Reform of the Law Dealing with Matrimonial Property in Nova Scotia* (Final Report, March 1997)

Mechanics' Lien Act

- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Discussion Paper, January 2003)
- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Final Report, June 2003)

Mental Health Provisions

- *Mental Health Provisions of the Hospitals Act* (Discussion Paper, September 2000)
- *Mental Health Provisions of the Hospitals Act* (Final Report, February 2002)

Mortgage Foreclosure and Sale

- *Mortgage Foreclosure and Sale* (Discussion Paper, July 1997)
- *Mortgage Foreclosure and Sale* (Final Report, September 1998)

Privity of Contract

- *Privity of Contract (Third Party Rights)* (Discussion Paper, March 2004)
- *Privity of Contract (Third Party Rights)* (Final Report, August 2004)

Probate

- *Probate Reform in Nova Scotia* (Discussion Paper, March 1998)
- *Probate Reform in Nova Scotia* (Final Report, March 1999)

Status of the Child Born Outside Marriage

- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Discussion Paper, August 1993)
- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Final Report, March 1995)

Structured Settlements

- *Court-ordered Structured Settlements for Personal Injury Damage Awards* (Background Paper, August 2004)

Tortfeasors

- *Joint Tortfeasors & the Common Law "Release Bar Rule"* (Final Report, July 2002)

Vexatious Litigants

- *Vexatious Litigants* (Discussion Paper, November 2005)
- *Vexatious Litigants* (Final Report, April 2006)

Wills Act

- *Reform of the Nova Scotia Wills Act* (Discussion Paper, July 2003)
- *Reform of the Nova Scotia Wills Act* (Final Report, November 2003)

Eighteen Annual Reports

- April 1, 1991 - March 31, 1992
- April 1, 1992 - March 31, 1993
- April 1, 1993 - March 31, 1994
- April 1, 1994 - March 31, 1995
- April 1, 1995 - March 31, 1996
- April 1, 1996 - March 31, 1997
- April 1, 1997 - March 31, 1998
- April 1, 1998 - March 31, 1999
- April 1, 1999 - March 31, 2000
- April 1, 2000 - March 31, 2001
- April 1, 2001 - March 31, 2002
- April 1, 2002 - March 31, 2003
- April 1, 2003 - March 31, 2004
- April 1, 2004 - March 31, 2005
- April 1, 2005 - March 31, 2006
- April 1, 2006 - March 31, 2007
- April 1, 2007 - March 31, 2008
- April 1, 2008 - March 31, 2009